

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

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In re: TRACY M. MONTGOMERY,  
  
Debtor.

BKY. No.: 04-60805  
Chapter 7

**NOTICE OF HEARING AND  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

-----  
TO: TRACY M. MONTGOMERY AND HER ATTORNEY, LOGAN  
MOORE, ATTORNEY AT LAW, 1118 BROADWAY, ALEXANDRIA,  
MN 56308.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home  
Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for  
the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 28, 2004 at 1:00  
P.M. in Courtroom No. 2, at the United States Courthouse, at 118 South Mill Street, in  
Fergus Falls, Minnesota, or as soon as counsel may be heard before The Honorable  
Dennis D. O'Brien, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later than  
September 23, 2004, which is three days before the time set for the hearing (excluding  
Saturdays, Sundays and holidays), or filed and served by mail not later than September  
17, 2004, which is seven days before the time set for the hearing (excluding Saturdays,  
Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS  
TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A  
HEARING.

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on July 8, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default from July 1, 2004 to date in the amount of \$899.18 per month, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$127,000.00. According to the Douglas County Tax Records the fair market value of the property is estimated at \$140,700.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to

Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 16, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The St. Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(D1673)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 16, 2007.

WELLS FARGO BANK, N.A.

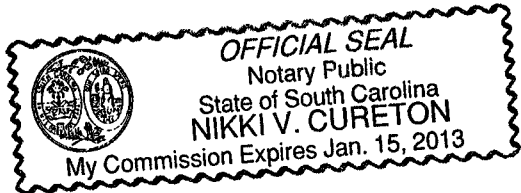
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

16<sup>th</sup> day of August, 2007

Nikki V. Cureton  
Notary Public



OFFICE OF COUNTY RECORDER } SS  
County of Douglas, Minn.

I hereby certify that the within instrument  
was filed in this office for record on the 26<sup>th</sup>  
day of Feb 2003 at 3:30  
o'clock P M and was duly recorded as  
Doc. No. 236680

Barbara Chernak Recorder

Judith Ross Deputy

REGISTRATION TAX HEREON	NO. <u>38346</u>
OF <u>288.65</u>	DOLLARS
HAS BEEN PAID	
<u>February 26, 2003</u>	
<u>Aria Anderson</u>	
Deputy Auditor/Treasurer	
Douglas County, Minnesota	

[Space Above This Line For Recording Data]

MORTGAGE

Alex Title  
P 21

Return To:  
WELLS FARGO HOME MORTGAGE, INC.  
3601 MINNESOTA DR. SUITE 200  
BLOOMINGTON, MN 55435

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated FEBRUARY 21, 2003 together with all Riders to this document.

(B) "Borrower" is TODD A MONTGOMERY AND TRACY M MONTGOMERY, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is WELLS FARGO HOME MORTGAGE, INC.

Lender is a CORPORATION

organized and existing under the laws of THE STATE OF CALIFORNIA

Lender's address is P.O. BOX 10304, DES MOINES, IA 503060304

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated FEBRUARY 21, 2003

The Note states that Borrower owes Lender ONE HUNDRED TWENTY FIVE THOUSAND FIVE HUNDRED AND 00/100

(U.S. \$ \*\*\*\*125,500.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MARCH 01, 2033

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

(A)

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
*Todd A Montgomery* (Seal)  
TODD A MONTGOMERY -Borrower

\_\_\_\_\_  
*Tracy M. Montgomery* (Seal)  
TRACY M MONTGOMERY -Borrower

\_\_\_\_\_  
(Seal) -Borrower

\_\_\_\_\_  
(Seal) -Borrower

\_\_\_\_\_  
(Seal) -Borrower

\_\_\_\_\_  
(Seal) -Borrower

\_\_\_\_\_  
(Seal) -Borrower

\_\_\_\_\_  
(Seal) -Borrower

236680

Lot Six (6), Block One (1), CARLOS BLUFFS, 1st ADDITION, according to the recorded plat thereof on file and of record in the office of the County Recorder, Douglas County, Minnesota;

EXCEPT

That part of Lot 6, Block 1, Carlos Bluffs, 1st Addition, according to the recorded plat thereof on file and of record in the office of the County Recorder, Douglas County, Minnesota, described as follows: Beginning at the Southwest corner of said Lot 6; thence North 87 degrees 00 minutes 46 seconds East, record bearing, along the South line of said Lot 6, a distance of 25.00 feet; thence North 02 degrees 59 minutes 14 seconds West, parallel with the West line of said Lot 6, a distance of 150.00 feet to the North line of said Lot 6; thence South 87 degrees 00 minutes 46 seconds West, along said North line, 25.00 feet to Northwest corner of said Lot 6; thence South 02 degrees 59 minutes 14 seconds East, along the West line of said Lot 6, a distance of 150.00 feet to the point of beginning.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

-----  
In re: TRACY M. MONTGOMERY,  
  
Debtor.

BKY. No.: 04-60805  
Chapter 7

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )  
  
COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtor.

2. That the payments due under said mortgage are in default from July 1, 2004 to date in the amount of \$899.18 per month, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$127,000.00. According to the Douglas County Tax Records the fair market value of the property is estimated at \$140,700.00.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

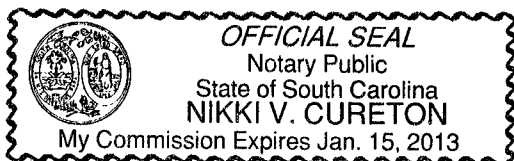
Dated: August 16, 2004

By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

16<sup>th</sup> day of August, 2004

Nikki V. Cureton  
Notary





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

-----  
In re: TRACY M. MONTGOMERY,  
  
Debtor.

BKY. No.: 04-60805  
Chapter 7

**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtor filed her petition herein on July 8, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Douglas County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as on Exhibit A attached to the Notice of Hearing and Motion for Relief from Automatic Stay.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$127,000.00. According to the Douglas County Tax Records the fair market value of the property is estimated at \$140,700.00. The payments due under said mortgage are in default from July 1, 2004 to date in the amount of \$899.18 per month, plus accrued late charges and inspection fees.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT  
RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has not offered any form of adequate protection to the Movant as the loan debt increases. The amount due under Movant's loan totals approximately \$127,000.00 and the fair market value of the property is estimated at \$140,700.00. Any purported equity in said real property would be consumed by per diem interest and marketing costs.

In view of the Debtor's inability to make payments toward her loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor's offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

## **CONCLUSION**

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 16, 2004

By: /e/ Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Saint Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(D1673)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re: TRACY M. MONTGOMERY,

BKY. No.: 04-60805  
Chapter 7

Debtor.  
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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on August 17, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Tamara L. Yon  
Trustee  
P.O. Box 605  
Crookston, MN 56716

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Tracy M. Montgomery  
5658 County Rd. 11 NW  
Alexandria, MN 56308

Logan Moore  
Attorney at Law  
1118 Broadway  
Alexandria, MN 56308

Todd Montgomery  
2591 Shadow Ln. SE  
Alexandria, MN 56308

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: August 17, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

6 W. Fifth Street

Seventh Floor

St. Paul, MN 55102-1420

(651) 297-6400

Attorney Reg. 152262

(D1673)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

-----  
In re: TRACY M. MONTGOMERY,  
  
Debtor.

BKY. No.: 04-60805  
Chapter 7

**ORDER TERMINATING STAY**  
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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 28, 2004 in Courtroom No. 2, at the United States Courthouse, at 118 South Mill Street, in Fergus Falls, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot Six (6), Block One (1), CARLOS BLUFFS, 1<sup>st</sup> ADDITION, according to the recorded plat thereof on file and of record in the office of the County Recorder, Douglas County, Minnesota;  
EXCEPT

That part of Lot 6, Block 1, Carlos Bluffs, 1<sup>st</sup> Addition, according to the recorded plat thereof on file and of record in the office of the County Recorder, Douglas County, Minnesota, described as follows: Beginning at the Southwest corner of said Lot 6; thence North 87 degrees 00 minutes 46 second East, record bearing, along the South line of said Lot 6, a distance of 25.00 feet; thence North 02 degrees 59 minutes 14 seconds West, parallel with the West line of said Lot 6, a distance of 150.00 feet to the North line of said Lot 6; thence South 87 degrees 00 minutes 46 seconds West, along said North line, 25.00 feet to Northwest corner of

said Lot 6; thence South 02 degrees 59 minutes 14 seconds East, along the West line of said Lot 6, a distance of 150.00 feet to the point of beginning, Douglas County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Dennis D. O'Brien  
Judge of the U.S. Bankruptcy Court